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August 14, 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: MM Docket No. 92-264
Horizontal Ownership Limits

Dear Ms. Salas:

Transmitted herewith, on behalf of Adelphia Communications Corporation, Falcon Holding Group, L.P., Insight Communications Company, L.P. and Lenfest Communications, Inc. ("Companies"), are an original and nine copies of comments in the above-referenced proceeding.

Because the Companies' comments also bear on issues raised in the Commission's Notice of Proposed Rulemaking in CS Docket No. 98-82, the Companies are concurrently submitting, under separate cover, an original and nine copies of these comments to be included in that docket as well.

Should there be any questions regarding this matter, kindly communicate with the undersigned.

Very truly yours,

Stuart Feldstein

Stuart F. Feldstein
Counsel for
Adelphia Communications Corporation
Falcon Holding Group, L.P.
Insight Communications Company, L.P.
Lenfest Communications, Inc.

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Federal Communications Commission
Washington, D.C.

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In the Matter of Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992 Horizontal Ownership Limits	)))))))	MM Docket No. 92-264
In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Review of the Commission's Cable Attribution Rules	))))))))	CS Docket No. 98-82

To: The Commission

JOINT COMMENTS OF ADELPHIA COMMUNICATIONS CORPORATION, FALCON HOLDING GROUP, L.P., INSIGHT COMMUNICATIONS COMPANY, L.P. AND LENFEST COMMUNICATIONS, INC.

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Date: August 14, 1998

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SUMMARY

For purposes of determining what constitutes an "attributable interest" the current horizontal ownership rules adopt the attribution criteria used in the broadcasting rules. The Companies submit that these attribution thresholds are too limiting for purposes of achieving the objectives of the horizontal ownership rules. The Companies urge the Commission to adopt an attribution standard for purposes of the horizontal rules based on the principle of managerial control. The principal policy goal of the horizontal ownership limits is to ensure that large cable companies cannot block the development of independent cable programmers. The current attribution standard sets the attributable interest threshold at such a low level and casts such a large net that many entities with no control over the programming choices of a cable system are nonetheless considered to hold an attributable interest in that cable system. The horizontal ownership attribution standard should instead focus on the ability of a given cable operator to control the programming choices of a particular cable system. To the extent that members of a joint venture do not have the power to dictate the programming decisions of the cable systems in the entity, it would not serve the policy goals underlying the horizontal ownership rules to count the joint venture system subscribers against such non-controlling entities.

The use of a managerial control test would encourage a reduction in the number and percentage of subscribers under TCI's control. By entering into a number of joint ventures, TCI has actually reduced the number and percentage of subscribers within its operational control. The Companies submit that this development serves the principal policy goal of the horizontal ownership rule in that it ensures that a company like TCI has even less ability to block the development of independent cable programmers.

A managerial control attribution test could be administered by adopting a checklist of criteria designed to ensure that a joint venturer does not have managerial control. The venturer attempting to establish that it does not have managerial control would certify to the Commission that it meets this checklist. If the certification can be made, that party should not be attributed with any of the subscribers which are part of the joint venture. If, however, an entity cannot make this certification in a particular venture, or its certification is rejected, as long as it owns 50% or less of the venture and itself does not have managerial control, the entity should only be attributed with its proportional share of the venture's subscribers.

The Companies agree with the Commission's proposal that the denominator in calculating a cable multiple system operator's market share should consist of the total number of MVPD subscribers nationwide. Adding all MVPD subscribers, both cable and non-cable, to the denominator recognizes that non-cable MVPDs provide an alternative programming distribution outlet for video programming. The number of subscribers served by such non-cable MVPDs decreases the ability of a cable operator to block distribution of any programming service. The Companies disagree with the Commission's proposal to add a cable operator's non-cable MVPD subscribers to the numerator. The Companies believe that the numerator must consist solely of a cable operator's cable subscribers. Because the Communications Act directs the Commission to prescribe limits on the number of cable subscribers one entity is authorized to reach through cable systems, the numerator must consist of the cable operator's cable subscribers only.

The Companies respectfully submit that the 30% horizontal ownership cap was set at too low a level in 1993 and that evolving market conditions and intervening changes to analogous Commission Rules demonstrate that the 30% limit is particularly inappropriate at this time. As noted above, the main policy goal of the horizontal ownership rules is to ensure that large cable companies cannot block the development of independent programmers. Statistics demonstrate that independent programming services have grown tremendously over the past several years even as the largest cable company has approached the 30% horizontal ownership cap. The robust MVPD marketplace, both cable and non-cable, has resulted in an ever expanding number of potential video programming distribution outlets. The growth and health of independent programming services demonstrates that the 30% cap can be safely raised. The Commission should therefore increase the cable system horizontal ownership limit.

Finally, if the Commission does not change the current horizontal ownership rules, it will need to address the issue of grandfathering arrangements which are already in place or under contract. The joint ventures which the Companies have entered into with TCI have been structured so that TCI will not exercise managerial control over these entities. Therefore, the entities respectfully submit that any of these transactions which were under contract prior to the release of the instant rulemaking should be grandfathered. Moreover, these grandfathered joint ventures should be allowed to add subscribers in the normal course of business to their existing cable systems and they should be permitted to acquire additional cable systems in order to further the efficiencies and consumer benefits realized by the geographic clustering which the joint ventures were formed to create.

Federal Communications Commission
Washington, D.C.

In the Matter of Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992 Horizontal Ownership Limits	)	MM Docket No. 92-264
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To: The Commission

JOINT COMMENTS OF ADELPHIA COMMUNICATIONS CORPORATION, FALCON HOLDING GROUP, L.P., INSIGHT COMMUNICATIONS COMPANY, L.P. AND LENFEST COMMUNICATIONS, INC.

Adelphia Communications Corporation ("Adelphia"); Falcon Holding Group, L.P. ("Falcon"); Insight Communications Company, L.P. ("Insight"); and Lenfest Communications, Inc. ("LCI") (collectively, the "Companies"),[1] by their attorneys, submit these joint comments in response to the Commission's Memorandum Opinion and Order on Reconsideration and Further Notice of Proposed

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[1]The Companies, their subsidiaries and controlled affiliates operate numerous cable television systems in various communities across the United States.

Rulemaking in MM Docket No. 92-264, FCC 98-138, released June 26, 1998 ("FNPRM").[2] The FNPRM seeks comment on a variety of issues relating to the Commission's horizontal ownership rules,[3] the effectiveness of which remain stayed pending judicial resolution of challenges to the validity of those rules.[4]

Noting the congressional mandate that the horizontal ownership rules reflect the "dynamic nature of the communications marketplace"[5] and the fact that the Commission adopted the current horizontal ownership rules nearly five years ago, the FNPRM seeks comment on, among other issues, whether the 30% horizontal ownership limit remains appropriate in light of changing competitive conditions; whether the rules should take into account all multi-channel video programming distributors ("MVPDs") and not just cable operators; and whether the rules should be changed to count actual subscriber numbers rather than homes passed.[6] Specifically, the Commission proposes to measure compliance with the horizontal ownership rules by counting all of the operator's cable subscribers plus its non-cable MVPD subscribers as part of the numerator, with the denominator consisting of the total number of MVPD subscribers (both cable and non-cable) nationwide.[7]

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[2]The discussion of attribution issues relating to the Commission's horizontal ownership rules also implicates the Commission's Notice of Proposed Rulemaking in CS Docket No. 98-82, FCC 98-112, released June 26, 1998. Accordingly, both rulemaking proceedings are included in the caption to these comments, and copies of these comments are being filed in both dockets.

[3]47 C.F.R. § 76.503.

[4]*See* Daniels Cablevision, Inc. v. United States, 835 F. Supp. 1 (D.D.C. 1993), *aff'd in part, rev'd in part*, Time Warner Entertainment Co., L.P. v. FCC, 93 F.3d 957 (D.C. Cir. 1996).

[5]47 U.S.C. § 533(f)(2)(E).

[6]FNPRM at ¶¶ 78-79.

[7]FNPRM at ¶ 79.

The Companies respectfully submit that the Commission set the current 30% horizontal ownership cap too low in 1993 and that evolving competitive conditions and intervening changes in analogous FCC rules demonstrate that the 30% limit is particularly inappropriate five years later. The Companies additionally support the Commission's proposal to factor all MVPD subscribers into the denominator for purposes of the calculation of the horizontal ownership limit. Finally, the Companies urge the Commission to recognize that an attribution standard for purposes of the horizontal ownership rules that is based on managerial control is the most efficient and accurate means of carrying out the goals of the horizontal ownership rules.

I. ATTRIBUTION UNDER THE HORIZONTAL OWNERSHIP RULES SHOULD BE BASED ON MANAGERIAL CONTROL.

For purposes of determining what constitutes an "attributable interest," the current horizontal ownership rules adopt the attribution criteria contained in the Notes to Section 76.501 of the Commission's rules.[8] Thus, general partnership interests of any amount are attributable. In the corporate context, voting stock interests amounting to 5% or more of the outstanding voting stock of a cable operator will be attributable, as will passive investment interests of 10% or more of the outstanding voting stock, unless the single majority shareholder exception applies. Non-voting stock interests are not attributable, nor are limited partnership interests attributable if the limited partner is sufficiently insulated from the management or operation of the cable television system. Officers and directors of a cable television operator are considered to have a cognizable interest in that operator.[9] The Companies submit that the current attribution thresholds applicable for purposes of

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[8]*See* 47 C.F.R. § 76.503(f); Notes to 47 C.F.R. § 76.501.

[9]*See* Notes to 47 C.F.R. § 76.501.

the horizontal ownership rules are simply too limiting for purposes of achieving the objectives of those rules and that those objectives are best served by basing the attribution criteria on the presence of managerial control.

A. Managerial Control is the Most Accurate Measure for Carrying Out the Policy Goals of the Horizontal Ownership Limit.

In directing the Commission to set horizontal ownership limits, Congress instructed the Commission to ensure, among other public interest objectives, that large cable operators could not "unfairly impede" or "unreasonably restrict" the flow of video programming from the video programmer to either consumers or other video distributors, and that large cable operators could not favor affiliated programmers in determining carriage on their cable systems.[10] The House Report to the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act')[11] outlined a concern that "the size of certain MSOs could enable them to extract concessions from programmers, including equity positions, in exchange for carriage."[12] In adopting the current cable horizontal ownership limit, the Commission noted that

> Congress sought to prevent large, vertically integrated cable systems from creating barriers to entry for new programmers and from causing a reduction in the number of media voices available to consumers. In addition, the 1992 Cable Act was intended to curb the ability and the incentive of cable operators to favor their affiliated video programmers over unaffiliated or competing video programming services.[13]

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[10]47 U.S.C. § 533(f)(2)(A)-(B).

[11]Pub.L. 102-385, 106 Stat. 1460 (1992).

[12]H.R. Rep. No. 628, 10d Cong., 2d Sess. 42 (1992).

[13]Second Report and Order in MM Docket No. 92-264, 8 FCC Rcd 8565, ¶ 6 (1993) ("Second Report and Order").

Thus, the main underlying policy goal of the horizontal ownership limits is to ensure that large cable MSOs cannot block the development of independent cable programmers.

However, the current attribution standard sets the attributable interest threshold at such a low level and casts such a large net that many entities with no control over the programming choices of a cable system will nonetheless be considered to hold an attributable interest in that cable system for purposes of the horizontal ownership rules. A cable company with, for example, a 5% partnership interest in a cable television joint venture will have little, if any, power to dictate the programming choices made with respect to the systems that are included within the joint venture, particularly where an independent entity holds 50% or more of the partnership equity and has been entrusted with managerial control. The policy goal of ensuring that a large cable operator cannot block the development and distribution of independent programming services simply is not served by an over inclusive attribution standard that imputes a measure of control over programming choices to a particular member of a joint venture that simply does not exercise that control.

Instead, the horizontal ownership attribution standard should focus on the ability of a given cable operator to control the day-to-day management of a particular cable system. In a joint venture between two or more cable operators, one of the cable operators typically will take on managerial responsibilities for the cable systems covered by the joint venture, thus assuming responsibility for all of the day-to-day operations of the cable systems. It is that managerial entity whose interest should be attributed for purposes of the horizontal ownership rules. To the extent that other joint venture members do not have the power to dictate the programming decisions of the affected cable systems, it would not serve the policy goals underlying the horizontal ownership rules to count the joint venture system subscribers against such non-controlling entities.

In addition, the Commission must recognize that even where an entity such as TCI does not hold managerial control in a joint venture, it may still retain certain generally accepted minority investor protections in order to safeguard its investment. The existence of such protections should not affect a finding that TCI does not hold managerial control over a given joint venture. Thus, TCI's interest in a joint venture would continue to be nonattributable for purposes of the horizontal ownership limits even where it retains certain generally accepted minority investor protections.

Prior Commission decisions outline the types of minority protections that are acceptable and will not result in attribution of the interest of the minority investor. For example, in In re Applications of Roy M. Speer and Silver Management Company, 11 FCC Rcd 14147 (1996), the Commission found that TCI's nonvoting interest in Silver Management was exempt from attribution where TCI contributed virtually all of the equity in Silver Management but ceded to Barry Diller, the sole holder of voting stock in Silver Management, nearly all of its potential influence and control over the company. Importantly, the Commission held that even though TCI's approval of certain "Fundamental Matters" was required, such matters were "permissible investor protections" that did not rise to the level of attributable influence.[14] The "Fundamental Matters" that required TCI approval were:

- any transaction not in the ordinary course of business, launching new or additional channels or engaging in any new field of business which would require TCI's divestiture of its interests in Silver Management;
- the acquisition or disposition of any assets or business with a value of 10% or more of the market value of Silver Management's outstanding equity securities at the time of the transaction;

[14] In re Applications of Roy M. Speer and Silver Management Company, 11 FCC Rcd 14147, ¶ 25.

- the incurrence of any indebtedness which has a value of 10% or more of the market value of Silver Management's outstanding equity securities at the time of such transaction;
- any material amendments to the certificate of incorporation or bylaws of Silver Management;
- engaging in any line of business other than media, communications and entertainment products, services and programming;
- the settlement of any litigation, arbitration or other proceeding which is other than in the ordinary course of business and which involves any material restriction on the conduct of business by Silver Management or TCI or the continued ownership of its assets by Silver Management or TCI; and
- any transaction between Silver Management and Barry Diller, subject to exceptions relating to the size of the proposed transaction and those transactions which are otherwise on an arm's length basis.[15]

Other Commission cases have held that the retention of similar minority investor protections would not result in attribution of the minority investor's interest.[16] Accordingly, to the extent that TCI will hold similar minority investor protections with respect to any of its existing or upcoming joint ventures with the Companies, such protections should not confer attributable status to TCI's interest in those joint ventures if, in addition, TCI does not hold managerial control over the cable systems served by those joint ventures.

B. The FCC Should Encourage, Not Penalize, Transactions Which Result in an Overall Reduction in the Number of Subscribers Subject to TCI's Managerial Control.

The use of a managerial control test, rather than the current attribution test, would encourage a reduction in the number and percentage of subscribers under TCI's control. Three of the

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[15]*Id.* at ¶ 18.

[16]*See, e.g.*, National Broadcasting Co., Inc., 69 RR 2d 1099 (1991); McCaw Cellular Communications, Inc., 66 RR 2d 667 (1989); News International, PLC, 55 RR 2d 945 (1984).

Companies have entered into contracts to form joint ventures with Tele-Communications, Inc. ("TCI"). In each of these joint ventures, TCI will not hold more than a 50% interest in the joint venture and will not exert managerial control over the joint ventures. In such circumstances, the Companies submit that TCI's interest in any given joint venture should not be attributed for purposes of the horizontal ownership rules upon a certification by TCI that it exercises no managerial control over the affected cable systems. The fourth Company, LCI, is a corporation owned 50-50 by TCI and various entities controlled by H.F. Lenfest. LCI has always managed the systems owned by this corporation and the history of this entity also is instructive regarding the workability of the Companies' suggested managerial control attribution test.

In each case, both the affected Company and TCI have contributed subscribers to the joint venture and, in each case, the non-TCI company is vested with managerial control over the systems in the joint venture. Thus, by entering into these arrangements, TCI has actually reduced the number and percentage of subscribers within its operational control. The Companies submit that this development serves the principal policy goal of the horizontal ownership rule, namely, to ensure that large cable MSOs such as TCI have even less ability to block the development of independent cable programmers. A closer examination of these joint ventures demonstrates the validity of this argument.

Specifically relating to the critical issue of control over programming, each of the Companies has the option of signing an agreement with Satellite Services, Inc. ("SSI"), a subsidiary of TCI, which arranges for the purchase of distribution rights for a variety of cable programming services. Many of the popular cable networks may be available through SSI at rates which are lower than those which would otherwise be obtainable. If a joint venturer with TCI enters into an SSI agreement, it can subsequently terminate its relationship with SSI. Under an SSI agreement the joint venturer can select from among those program services available through SSI, or it can separately contract for non-SSI program services. Of course, the joint venture is legally obligated to comply with existing program carriage agreements entered into by TCI for its systems prior to the establishment of the joint venture. The experience of several joint venturers under an SSI agreement convincingly demonstrates the programming freedom which the newer joint ventures should enjoy.

1. Falcon/TCI Joint Venture

The partnership currently being formed by Falcon and TCI is precisely the type of transaction which the Commission's horizontal ownership rules should be designed to encourage rather than discourage. Falcon, as managing general partner of numerous limited partnerships, currently operates over 48 cable systems in 26 states serving approximately 700,000 basic subscribers. Falcon systems operate primarily in rural and suburban markets. Its largest system serves 42,286 subscribers in and around Warrensburg, MO, whereas its smallest system serves only 2,452 subscribers in Rockmart, GA. Falcon's average headend serves 2,583 subscribers.

Given the geographic distribution of Falcon's systems in 26 states, ranging from Florida to Washington and from California to New York, coupled with the largely rural nature of its communities, Falcon has faced significant challenges in raising the capital necessary to upgrade its systems to meet the demands from consumers and municipal officials. Moreover, its existing financial partners are not active participants in the cable industry, and thus have generally attempted to minimize capital expenditures in order to maximize their return. In addition, several of Falcon's existing partnership agreements contain termination provisions whereby the passive investors could exercise exit options in the near future.

Most significantly, Falcon's current investors hold budget and capital expenditure veto power. Falcon's attempts to implement rebuilds in many of its communities were consistently reduced or rejected by the existing investors. Thus, given the confluence of circumstances faced by Falcon, absent a new infusion of investment capital, Falcon would likely have been forced to sell out partially or entirely to a larger MSO, rather than remain as an independent operator. Such a result would have been entirely contrary to the goals of the horizontal ownership rules.

On December 30, 1997, Falcon and TCI signed a definitive agreement to establish a new partnership, Falcon Communications, L.P. ("New Falcon"). TCI will contribute to the partnership cable systems in Washington, Oregon, California, Missouri and Alabama comprising approximately 300,000 subscribers. These systems will be combined with Falcon's existing operations. Upon closing, TCI will hold approximately 47% of the equity of New Falcon, and Falcon will hold the remainder of the equity and be the managing partner.

The formation of New Falcon will result in numerous benefits. First and foremost, it will provide the financial security to allow Falcon to remain as an independent force in the cable industry for the foreseeable future solely operating in small and medium size communities. Not only will financing capital needs such as digital boxes become easier to arrange and at less expensive rates, but also programming costs should decrease, a significant portion of which savings will be passed on to subscribers. Equally as important, Falcon will gain these benefits without losing the right to select what kind of digital boxes to purchase and what programming to offer its subscribers. Moreover, the systems being contributed by TCI will allow Falcon to further implement its clustering strategy and the resultant benefits which flow from clustering. For example, TCI is contributing systems serving Newport, Grants Pass, Klamath Falls and Medford, OR. These systems serve to fill in Falcon's existing operations in SW Oregon and along the entire Oregon coast. Falcon is already planning its upgrade of the Ashland/Medford/Grants Pass cluster and the introduction of high speed, broadband Internet access service.

In addition, local advertisers in the smaller rural markets served by Falcon will be able to reach a critical mass of local subscribers. Finally, New Falcon will be able to institute the use of 24-hour subscriber call centers rather than third-party answering services to respond to after hours calls. Last, but not least, Falcon will gain the freedom to budget and invest for the future which it has not had with its old partners. TCI does <u>not</u> have budget or capital expenditure power over New Falcon.

It is also important to recognize that the systems being contributed by TCI are among its smaller systems and did not fit into any significant clustering strategy. But these same systems will form the heart of New Falcon's clustering strategy in five of the states where Falcon has an existing significant presence. As might be expected, a company's smaller properties do not always receive the same level of attention as its larger systems. Moreover, TCI candidly admits that, because of Falcon's years of specialization in smaller, more rural systems, Falcon simply will be a better and more efficient operator of these systems. As TCI President Leo J. Hindery, Jr. stated upon the execution of the definitive agreement, New Falcon will provide "better service and products to about a million cable customers, many of whom reside in smaller, more rural communities. Through this new partnership, video, data and telecommunications products will be more efficiently and more timely deployed to cable consumers in these markets." In sum, the New Falcon partnership will result in the following benefits:

- The transaction will create more efficient regional cable system clusters that will be managed and controlled by Falcon with a far greater local presence than TCI. This will allow Falcon to better manage the systems and more effectively serve the needs and interests of consumers in those areas.

- The transaction will allow Falcon to maintain a continued presence in the cable industry, unlike many independent cable operators who have been forced to sell.
- The transaction will facilitate Falcon's development of a critical mass in certain geographic areas to allow it to be more efficient and have the economic base to offer state-of-the-art technology to consumers.
- The transaction will allow Falcon to benefit from the current experience of TCI in offering new services, such as Internet access, in its communities.

Particularly in light of the public benefits described above, all of New Falcon's subscribers should be attributed to Falcon, and not to TCI, for horizontal ownership rule compliance purposes. This conclusion is buttressed by the fact that Falcon, and not TCI, will have the exclusive right to exercise managerial control over New Falcon. The New Falcon Partnership Agreement expressly provides that Falcon will have exclusive authority to manage the business, operations and affairs of New Falcon and the exclusive right to exercise all rights incident to the ownership of all partnership or corporate interests held by New Falcon. Thus, Falcon will have ultimate authority over programming decisions, personnel matters, decisions relating to technology (deployment of fiber, introduction of digital services, selection of set-top boxes, etc.), rebuild schedules, tiering and marketing -- in short, control over day-to-day operations. To be sure, TCI will retain super majority approval rights over certain fundamental matters such as sale of assets and change of status, but the Commission has long held that these generally accepted minority owner protections do not result in a finding of attribution. Similarly, certain partnership actions require approval by New Falcon's Advisory Committee. However, the Advisory Committee will also not be controlled by TCI. To the contrary, Falcon will have the right to appoint three Advisory Committee members, TCI only two, and Falcon and TCI will agree on the sixth member.[17] In sum, the TCI transaction gives Falcon more autonomy over day-to-day decisions than it has had in the previous twenty years with so-called "passive" financial investors.

2. Insight/TCI Joint Venture

The partnership being formed by Insight and TCI also fits the mold of those kind of arrangements which actually lessen TCI's influence in the cable industry. Until recently, Insight operated cable systems in California, Arizona, Utah, Virginia, Illinois, Kentucky and Indiana. These systems served approximately 250,000 subscribers, with the largest concentration located in Indiana. As a result of several recent transactions, which are in various stages of completion, Insight will have traded its systems in Arizona, Utah and Virginia for additional systems in Indiana.

On May 14, 1998, Insight and TCI signed a definitive agreement to establish a new joint venture, Insight Communications of Indiana LLC ("Insight LLC"). Each party will contribute systems with approximately 160,000 subscribers, almost all located in Indiana (a few are located in Kentucky). Each party will hold 50% of the equity, but Insight will be the Managing Member. The most obvious benefit of this arrangement is that it invigorates and bolsters Insight's ability to be a strong independent player in the cable industry. The combination of TCI and Insight systems in Indiana will greatly enhance the advantages of clustering. Upon consummation, Insight will control some 320,000 subscribers in Indiana. Service to customers will surely improve more rapidly because, as Insight President Michael S. Willner stated upon execution of the letter of intent, " . . . those

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[17]John Evans, a distinguished cable industry figure who has no attributable interest in either Falcon or TCI, has been selected to be the sixth member of the Advisory Committee.

[clustering] efficiencies will enable us to provide exciting new data and digital services sooner and more cost effectively." Thus, the new Insight LLC will produce the following benefits:

- The transaction will allow Insight to develop a critical mass in Indiana to allow it to be more efficient and have the economic base to offer state-of-the-art technology to consumers. This will allow Insight to better manage the systems and more effectively serve the needs and interests of consumers in those areas.

- The transaction will allow Insight to maintain a continued presence in the cable industry unlike many independent cable operators who have been forced to sell.

- The transaction will allow Insight to benefit from the current experience of TCI in offering new services, such as Internet access, in its communities.

Just as in the case of New Falcon, all of the subscribers in the new Insight LLC should be attributed to Insight, and not to TCI, for the purposes of the horizontal ownership rule since Insight will have the exclusive right to manage the systems.

The Insight LLC Agreement expressly provides that Insight will have exclusive authority to manage the business, operations and affairs of the new entity. Thus, Insight will have ultimate authority over programming decisions, personnel matters, decisions relating to technology (deployment of fiber, introduction of digital services, selection of set-top boxes, etc.), rebuild schedules, tiering and marketing -- in short, control over day-to-day operations. TCI will retain veto rights over certain fundamental matters, but the Commission has long held that these generally accepted minority owner protections do not result in a finding of attribution. Similarly, certain actions require approval by a Management Committee. However, the Management Committee will also not be controlled by TCI. To the contrary, Insight will have the right to appoint three Management Committee members and TCI only two.

3. Adelphia/TCI Joint Venture

This partnership arrangement is similar in reason and scope to the Insight transaction. Adelphia is the dominant cable operator in the Buffalo, New York ADI with over 298,000 subscribers. Adelphia also owns and operates a major regional sports network in the market. Buffalo is thus one of Adelphia's most important strategic markets. TCI, on the other hand, has 166,000 subscribers in the market and does not consider Buffalo a strategic market.

Thus, on July 30, 1998, TCI and Adelphia consummated an agreement to create a partnership named Parnassos, L.P. which consists of a 465,000 regional subscriber cluster and includes the regional sports network. Adelphia owns a 65.6% interest in the partnership and TCI owns the remaining 34.4%.

The synergies which this partnership will create all relate to the effects of clustering a large number of subscribers in a major market. In particular, the ability to commit sufficient capital so as to offer the cutting edge services of a state-of-the-art cable system cannot be overemphasized. A two-way interactive system offering voice, data and Internet services, in addition to a multiplicity of entertainment and information fare, will be made possible by the critical mass of subscribers in the partnership.

The partnership's governance, like that of New Falcon and Insight LLC, should give the Commission no cause for concern. The partnership will be run by an Operating Committee of five members, three chosen by Adelphia and two by TCI. Adelphia will be the manager of the partnership's systems and have day-to-day control. The only matters requiring TCI consent are those customarily associated with minority investors' rights, *e.g.*, dissolution of the partnership, incurrence of indebtedness above a certain level, sale of assets, and the like. All key managerial decisions, however, will be vested in Adelphia, such as programming choices, personnel, marketing, rebuilds, etc.

In sum, the structures of New Falcon, Insight LLC and Parnassos, L.P. serve to alleviate any concerns which underlie the horizontal ownership limit. The net effect of these combinations is that TCI is relinquishing control over some 626,000 subscribers, and not gaining any ability to control or unduly influence the operations of systems serving the additional 1,158,000 subscribers being contributed to the joint ventures by Falcon, Insight and Adelphia. Thus, because these transactions actually reduce the number of subscribers within the control of TCI, they are fully consistent with the goals of the horizontal ownership cap. On the other hand, if these transactions were deemed to be a subscriber gain by TCI rather than a reduction, there is a substantial likelihood that TCI might be unable to consummate them if the rules in their current form were to take effect. In the case of Falcon, in particular, such a result would be entirely contrary to Congress' express admonition, when it adopted this provision, that the Commission "not impose limitations which would bar cable operators from serving previously unserved rural areas."[18] By impeding Falcon's ability to continue its long tradition of service to more rural cable subscribers, an overly restrictive horizontal ownership cap would violate this Congressional mandate. In the case of Insight, the TCI transaction provides it with the critical mass and economic benefits which will enable it to survive in an increasingly competitive marketplace. As for Adelphia, the obvious benefits of the Buffalo area cluster would be lost.

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[18] 47 U.S.C. §533(f)(2)(F).

4. LCI/TCI

TCI bought a minority position in LCI in 1981. That position gradually increased through a series of transactions until it was equalized at 50-50 in March, 1992. However, H. F. Lenfest, Chief Executive Officer and President of LCI, individually and with his three children for whom he holds proxies, controls 50 percent of the issued and outstanding common stock of LCI and has management control by agreement with TCI. The arrangement shares many of the same characteristics as the three joint ventures described above. It is therefore instructive to see how LCI has operated in practice in order to test the Companies' managerial control thesis and to validate the predicted workability of the newer joint ventures.

Mr. Lenfest and LMC Lenfest, Inc., the indirect wholly owned subsidiary of TCI owning 50 percent of LCI, have an agreement that provides, together with the Amended and Restated Certificate of Incorporation of LCI, that Mr. Lenfest has the right to designate a majority of the Board of Directors until January 1, 2002. During such period, vacancies in respect of the directors designated by Mr. Lenfest are to be filled by designees of Mr. Lenfest or, in the event of Mr. Lenfest's death, The Lenfest Foundation. Thereafter the Lenfest Family ("H. F. (Gerry) Lenfest, Marguerite Lenfest, their issue and The Lenfest Foundation") and LMC Lenfest, Inc. will have the right to appoint an equal number of members of LCI's Board of Directors. This right will continue for so long as any member of the Lenfest family owns any stock in LCI. Until January 1, 2002, Mr. Lenfest has the right to be Chief Executive Officer and President of LCI.

LCI, which has existed since 1974, owns and controls 17 cable systems serving over 1,000,000 subscribers in eastern Pennsylvania, southern New Jersey, and northern Delaware. The joint ownership with TCI does give LCI more advantageous access to the capital market than similarly sized MSOs, and it has allowed LCI to develop one of the largest cable system clusters in the cable industry. Gerry Lenfest, the primary shareholder in LCI, is the President of LCI and exercises full management control over LCI's operations. TCI has no control or significant influence in the management of the systems. The lack of such significant influence in the management of LCI means that, even as a 50 percent equity holder, TCI cannot treat LCI as a consolidated subsidiary for financial reporting purposes.

Mr. Lenfest maintains a 3 to 2 majority on LCI's Board of Directors. Since Mr. Lenfest controls proxies from his three children, he elects three directors and can replace any one of them at will. Mr. Lenfest also has the right to be the President and CEO of LCI until January 1, 2002. Thereafter he could only be replaced by a majority vote of the LCI Board - yet the Board could be deadlocked at that time - and so he would continue in office after that time until the Board decided otherwise.

Mr. Lenfest makes all budgetary (operating and capital), subscriber rate, equipment purchase, and personnel decisions for LCI. TCI does not influence such decision-making, nor does it have the ability to make such decisions under its agreement with Mr. Lenfest.

As to programming decisions, LCI entered into a contract with SSI in 1986. In the subsequent twelve years LCI's management has had full discretion to make all determinations regarding the carriage and tiering of its cable programming services. LCI has had the right to utilize TCI's negotiated program rate structure under the SSI Agreement if LCI chooses to carry a specific cable network covered by the Agreement. While LCI has utilized the SSI Agreement for a number of its program services, it, on the other hand, has negotiated its own affiliation contracts for other cable networks rather than choosing to acquire the rights under the SSI

Agreement. In other instances, LCI has chosen not to carry a cable network included in the SSI Agreement at all. As a practical matter, LCI's cable systems do not have sufficient capacity to carry all cable programmers who may enter into affiliations agreements with SSI. Moreover, program networks affiliated with TCI or with Liberty have no greater opportunity for carriage by LCI than any other cable network. To the extent LCI acquires any system previously wholly owned by TCI, *e.g.*, New Castle County, Delaware, and such system was obligated by contract to carry a particular service under an existing contract, LCI is legally obligated to continue such carriage until the contract expiration.

Furthermore, LCI has negotiated some of its own retransmission consent agreements for the carriage of certain television broadcast stations. LCI has the right, but not the obligation, to be included in the TCI retransmission consent agreements where it chooses to do so.

LCI has contracted to use the HITS digital service in implementing digital tier strategy, but it was not obligated to do so. It decided to do so for its own strategic purposes. LCI also is exploring whether to offer locally encoded digital services on its own in addition to those it will purchase from HITS. Similarly, LCI experimented on one system with becoming its own Internet provider, although it has decided to use the "At Home" service on all systems because the economics of going alone did not make sense.

As to technology choices, LCI has the opportunity to benefit from certain research and experience that only a company as large as TCI can afford. However, it has no obligation to select the ISP modem chosen by TCI, nor to participate in the TCI contract with General Instruments for the provision of set top boxes although it has chosen to do so. LCI makes and will continue to make its own decisions on technology; however, LCI does obtain the buying power